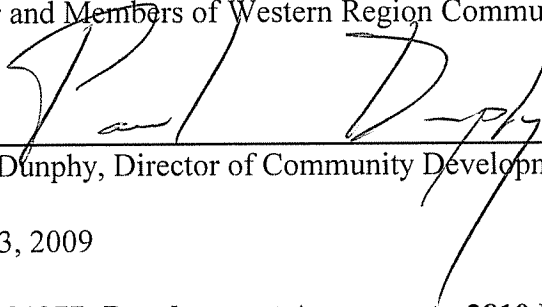




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Halifax, Nova Scotia
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Western Region Community Council
June 22, 2009

TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: June 3, 2009

SUBJECT: **Case 01077: Development Agreement - 2810 Prospect Road, Whites Lake**

SUPPLEMENTARY REPORT

ORIGIN

- Application by the W.M. Fares Group to permit by development agreement a shopping centre at 2810 Prospect Road, Whites Lake.
- March 18, 2009 report to WRCC.
- May 25, 2009 public hearing.
- May 25, 2009 deferral of decision by WRCC and request for supplementary report.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Approve the development agreement, as contained in Attachment A of the March 18, 2009 report, to enable a shopping centre consisting of two buildings at 2810 Prospect Road, Whites Lake.
2. Approve the amendments to the March 18, 2009 development agreement as contained in Attachment "A" of this report.
3. Require that the development agreement be signed and returned within 120 days, or any extension thereof granted by Community Council on request of the Developer, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND/DISCUSSION

At the May 25th WRCC meeting, Council instructed staff to prepare a supplementary report addressing comments and questions raised by members of Council following the public hearing. The following are staff's responses to those items:

1. Assurance that Section 4.4.2 - requiring a Level II Groundwater Assessment and its recommendations be carried out (Page 18) prior to development.

Section 4.4.2 of the development agreement requires the preparation of a Level II Groundwater Assessment prior to the issuance of a Construction Permit. However, reference should be made to the HRM document titled: Guidelines for Groundwater Assessment and Reporting. Staff is therefore recommending that Section 4.4.2 of the agreement be amended to reference the Guidelines as noted in item 1 of Attachment "A".

Staff agrees that clarification should be made in the development agreement to indicate that the developer is required to carry out the recommendations contained in the Level II Groundwater Assessment report. However, we do not believe it is reasonable to require that the recommendations be completed prior to development. Instead, staff propose that the agreement be amended as noted in items 2 and 3 of Attachment "A" to require that the recommendations be carried out prior to the issuance of the first Occupancy Permit.

2. That Section 5.2 Stormwater Management System (Page 19) be done in advance of any development.

Section 5.2 of the development agreement requires the Developer to construct a Stormwater Management System on the subject site prior to the issuance of an Occupancy Permit [see Section 3.22.3(b)]. This is typical of projects of this nature, as the construction of such systems usually occur following site grading and foundation work, but prior to paving and landscaping. During construction, the Developer will need to implement a detailed Erosion and Sedimentation Control Plan which will include interim stormwater management measures [see Section 5.1(b)].

3. What precedents/business practices/remedies/remedial action would be in place in regard to what should be operating in relation to the two above noted clauses (items 1 and 2).

At present, groundwater assessments are chiefly used in the open space design development agreement process to help ensure that future owners of homes and lots in areas serviced with well water have a high probability of obtaining adequate quantities of potable water for domestic consumption over both the short and long-term. A groundwater assessment is not intended to provide a guarantee that future home owners will have an adequate supply of potable water, but rather to provide a qualified opinion of the likelihood of obtaining an adequate supply of potable

water. Where a groundwater assessment provides that adequate quantities of water are not available for the proposed development, then it must suggest appropriate mitigation measures such as but not limited to larger lot sizes to reduce the concentration of withdrawals, smaller total number of lots to reduce the volume of groundwater withdrawals over the proposed development area and/or the development of alternative water sources.

With respect to stormwater, the Stormwater Management Plan will be reviewed by both the Municipality and the Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR) prior to the issuance of any municipal permits. The Municipality will review the plan in the context of a Topsoil Removal Permit, while NSTIR will review the plan in the context of a Site Access Permit. Both levels of government will require that there be no net increase in the amount of stormwater flow emanating from the site. A professional engineer hired by the Developer will then need to certify that the Stormwater Management System has been constructed as per the requirements of the Stormwater Management Plan prior to the issuance of the first Occupancy Permit.

4. Assurance that if, post development, there are any traffic issues related to the Stoney Beach Road intersection, that the issues be mitigated immediately.

HRM staff is unable to provide any assurance to Council that mitigation measures will be implemented in the event that post development traffic issues relating to the Stoney Beach Road intersection were to arise. Both the Prospect Road and Stoney Beach Road fall under the jurisdiction of NSTIR and it is the responsibility of this department to assess, monitor, and mitigate any impacts on its road network. The Municipality is unable to require the Province through the development agreement process, or any other mechanism, to mitigate traffic related issues on the provincial road network.

It is important to note, however, that a traffic impact study was prepared as part of this application process and has already been reviewed and accepted by NSTIR.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

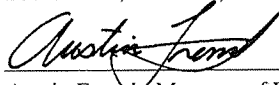
1. Community Council may choose to approve the entire development agreement, as contained in Attachment A of the March 18, 2009 report and as subsequently amended under Attachment "A" of this report. This is the recommended course of action.
2. Community Council may choose to alter the terms of the development agreement. This may necessitate further negotiations with the Developer, and may require an additional public hearing.
3. Community Council may choose to refuse the entire development agreement. Pursuant to Section 254(6) of the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal, based on the policies of the MPS.

ATTACHMENTS

Attachment "A" Amendments to March 18, 2009, Draft Development Agreement

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Luc Ouellet, Planner I, 490-3689

Report Approved by: 
Austin French, Manager of Planning Services, 490-6717

Attachment "A"
Amendments to the March 18, 2009, Draft Development Agreement

1. Amend the March 18, 2009, draft development agreement by replacing Section 4.4.2 with the following:
 - 4.4.2 Prior to the issuance of a Construction Permit for any component of this Agreement, the Developer shall carry out, to the satisfaction of the Development Officer, a Level II Groundwater Assessment as described in the report titled Groundwater Supply Assessment prepared by Strum Environmental and dated March 31, 2008, and as per the applicable requirements of the HRM document titled Guidelines for Groundwater Assessment and Reporting.

2. Amend the March 18, 2009, draft development agreement by adding the following clause under Section 3.22.3:
 - (d) Certification from a Qualified Professional that the recommendations contained in the Level II Groundwater Assessment report have been carried out.

3. Amend the March 18, 2009, draft development agreement by adding the following clause under Part 4:
 - 4.4.3 Prior to the issuance of the first Occupancy Permit, a Qualified Professional must certify that the recommendations contained in the Level II Groundwater Assessment report, required under Section 4.4.2, have been fully carried out.